Street Railway v. *Traveler's Insurance Co.* (1902), 180 Mass. 263, 62 N. E. 364, 57 L. R. A. 629.

The court reasoned as follows: In Massachusetts a statutory action lies for the death of a person, not as an asset of the estate but for the benefit of the widow, children or other near relatives. But an action for injuries accrues to the person injured and survives in case of his death. The action for injuries and the one for death are distinct, and cases in this state have so held. Therefore, said the court, insurance may be taken out against one liability or against both. And a policy which by its terms insures against one liability cannot be construed to insure also against the other. Morton and Barker, J. J., dissented, contending that the policy should be construed not according to the literal sense of the words, but according to the nature of the contract and the situation of the parties. With such a construction, they said, it seems difficult to believe that the parties intended to effect only a partial insurance against loss from accidents. There seems to be no other case in point. Whether the cause of action arising from injuries is distinct from that arising from death, is not without dispute. The weight of authority seems to be in favor of the distinction. On this subject see *Louisville & N. R Co.* v. *McElwain*, 98 Ky. 700, 34 S. W. 236, 34 L. R. A. 788 (and exhaustive note); *Sweetland* v. *C. & G. T. Ry. Co.*, 117 Mich. 329, 75 N. W. 1066, 43 L. R. A. 568; *Hill* v. *R. R. Co*,, 178 Pa. St. 223, 35 Atl. 997, 35 L. R. A. 196; *Brown* v. *C. & N. W. Ry. Co.* 102 Wis. 137, 78 N. W. 771, 44 L. R. A. 579. This question, however, was not raised by the dissenting judges. They contended for a construction of the policy that would insure against liability for either cause of action.

LIMITATION OF ACTIONS—GUARANTY.—Defendant guaranteed the payment of a note at maturity. The payee neglected to bring suit, and the statute of limitations ran in favor of the maker. The payee then sued the guarantor. *Held*, that the guarantor was liable, although the action against the principal was barred. *Seabury* v. *Sibley* (1903), — Mass. —, 66 N. E. Rep. 603.

The rule announced in this decision is subject to some question. The contrary doctrine is laid down in *Ohio* v. *Blake*, 2 Ohio St. 147; *Bridges* v. *Blake*, 106 Ind. 332, 6 N. E. 833; *Auchampaugh* v. *Schmidt*, 70 Iowa 642, 27 N. W. 805, 59 Am, Rep. 459; *Bank* v. *Conway*, 18 Ohio 234, and it must be admitted that there is force in the argument, that since a guarantor can set up any meritorious defense available to the principal, he should not be compelled any more than the principal is, to preserve the evidence of this defense for a longer period than that provided by the statute of limitations. The court cites a number of cases to sustain its view: *Bull* v. *Coe*, 77 Cal. 54, 11 Am. St. Rep. 235; *Willis* v. *Chowning*, 90 Tex. 617, 40 S. W. 395, 59 Am. St. Rep. 842; *Moore* v. *Gray*, 26 Ohio St. 525; *Banks* v. *Maryland*, 62 Md. 88; *Smith* v. *Gilliam*, 80 Ala. 296; *Sibley* v. *McAllaster*, 8 N. H. 389. These cases, however, cannot be taken as strictly applicable. They are to the effect that a surety is not discharged by the failure of the creditor to present his claim against the estate of the principal in the time provided by the administration laws. This principle is universally admitted for the reason that the death of the principal leaves the surety primarily liable, and the creditor may proceed at once against the surety without having presented his claim to the administrator at all. *Scantlin* v. *Kemp*, 34 Tex. 388. The principal case is supported directly by *Carter* v. *White*, 25 Ch. D. 666, and by the general doctrine announced in *Ray* v. *Brenner*, 12 Kan. 105, and *McKenzie* v. *Ward*, 58 N. Y. 541, 17 Am. Rep. 281.

Because of the confusion that exists between the liabilities of a surety and guarantor, the decisions are not satisfactory. A possible argument against the holding of the principal case is as follows: The statute provides that no action shall be brought on a contract, unless within six years after the action accrues. Here was a guarantor of payment who became liable at the same time as the principal. That is to say, the action accrued against the guarantor when the principal made default. If the six years that have elapsed prevent a recovery against the principal, why do they not operate to the same effect in favor of a guarantor whose liability began precisely at the same time with that of the principal?

MASTER AND SERVANT—EXTRATERRITORIAL EFFECT OF STATUTE IMPOSING LIABILITY UPON MASTER FOR INJURY TO SERVANT.—Plaintiff's intestate was employed by the defendant, a Michigan firm, on board a tug. While in Canada he sustained an injury through the negligence of a fellow servant, which resulted in death. Plaintiff brought suit in Michigan, relying upon the Canadian statute which dispensed with the immunity of the employer from liability by reason of the fellow-servant rule. Had the injury occurred in Michigan, plaintiff would have no right of action. *Held*, that the plaintiff's rights were to be determined by the law of Canada. *Ricks* v. *Saginaw Bay Towing Co.* (1903), — Michigan —, 93 N. W. Rep. 632.

The general rule is that a foreign law, in cases other than penal actions, will be recognized by the courts of the state where the action is brought, provided the foreign law is not contrary to the public policy of such state. Some of the courts declare that the law of the forum, and the law of the place where the right of action accrued, must concur, in order to sustain the right of action. *Wooden* v. *Railway*, 126 N. Y. 10, 22 Am. St. Rep. 803; *Anderson* v. *Railway*, 37 Wis. 321. In *Taylor's Adm'r* v. *Penn. Co.*, 78 Ky. 348, 39 Am. Rep. 244; *Vawter* v. *Railway*, 84 Mo. 679, 54 Am. Rep. 105; and *Ash* v. *Railway*, 72 Md. 144, 20 Am. St. Rep. 461, the same rule was stated, but the question involved was the right of the administrator to bring suit, and it was held he could not. The courts have also differed in determining what constitutes a penal statute. In *Dale* v. *Railway*, 57 Kansas 601, 47 Pac. Rep. 521, the court refused to recognize a statute of New Mexico requiring railway companies to pay to the estate of any servant $5,000.00 for an injury resulting in death occasioned by the master's negligence. In *Bettys* v. *Railway*, 37 Wis. 323, the court refused to enforce a liability imposed by an Iowa statute, giving the plaintiff double damages for cattle killed in Iowa. In the principal case the reasoning of the court in *Herrick* v. *Railway*, 31 Minn. 11, 47 Am. Rep. 771, is approved and the decision followed. It is supported by the later decisions.

MASTER AND SERVANT—LIABILITY OF MASTER FOR INJURY TO SERVANT CAUSED BY DISOBEDIENCE OF MASTER'S ORDER.—A workman employed in defendant's colliery was suspended. In order to get out of the mine he had to go to the pit bottom and wait until the cage went up, which was three hours later. On his way down he stopped in a "pass-by" where the men were accustomed to eat their dinners. While waiting there he was ordered to go to the "pit bottom." Contrary to the order, he remained in the "pass-by" and was injured by the roof falling. The injury took place before he had an opportunity to get out of the mine, even if he had obeyed the order. *Held*, that the accident did not arise out of and in the course of his employment. *Smith* v. *Colliery Co.* (1903), 1 K. B. 204.

What disobedience of the servant terminates the employment is a difficult question. In *Lowe* v. *Pearson* (1899), 1 K. B. 261, a boy, whose duty was to